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DECISION

ANABEL ANDERSON IMBERT, M.D.
President
Division of Medical Quality

DANIEL E. LUNGREN, Attorney General
of the State of California
Susan K. Meadows
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	Case No. 13-92-21952
Against:)	
Warren McKay, M.D.)	OAH No. N 9510027
3045 Jackson Street, #101)	STIPULATED SETTLEMENT
San Francisco, CA 94115)	AND DECISION
Physician & Surgeon's Certificate)	
No. G59634)	
Respondent.)	

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs ("Division") the parties hereby agree to the following Stipulated Settlement and Decision which will be submitted to the Division for its approval and adoption as the final disposition of the Accusation.

PARTIES

1. Complainant Ron Joseph is the Executive Director

1 of the Medical Board of California who brought this action solely
2 in his official capacity and is represented in this matter by
3 Daniel E. Lungren, Attorney General of the State of California,
4 by Susan K. Meadows, Deputy Attorney General.

5 2. Respondent Warren McKay is represented in this
6 matter by attorney Robert Sullivan of the law offices of
7 Nossaman, Guthner, Knox & Elliott, LLP, whose address is 915 L
8 Street, Suite 1000, Sacramento, CA 95814-3701. At all times
9 relevant herein, respondent has been licensed by the Medical
10 Board of California under License No. G59634.

11 JURISDICTION

12 3. Accusation, No. 13-92-21952 was filed before the
13 Division and is currently pending against respondent. The
14 Accusation, together with all other statutorily required
15 documents, was duly served on the respondent. A copy of
16 Accusation No. 13-92-21952 is attached as an Exhibit and
17 incorporated herein by reference.

18 ADVISEMENT AND WAIVERS

19 4. Respondent has fully and completely discussed with
20 his counsel the nature of the charges alleged in the Accusation
21 and the effects of this stipulation.

22 5. Respondent understands the charges and allegations
23 in the Accusation, if proven at a hearing, constitute cause for
24 imposing discipline upon his license. Respondent is fully aware
25 of his legal rights and that, but for this Stipulation, he would
26 be entitled: 1) to a hearing on the charges and allegations in
27 the Accusation; 2) to be represented by counsel, at his own

1 expense, in all proceedings in this matter; 3) to confront and
2 cross-examine the witnesses against him; 4) to present evidence
3 on his own behalf and to the issuance of subpoenas to compel the
4 attendance of witnesses and the production of documents; 5) to
5 reconsideration and appeal of an adverse decision; and 6) all
6 other rights accorded pursuant to the California Administrative
7 Procedure Act and other applicable laws.

8 6. With these rights in mind, respondent freely,
9 voluntarily, knowingly and intelligently waives and gives up each
10 and every right set forth above.

11 7. For the purpose of resolving Accusation No. 13-92-
12 21952, respondent admits that cause for discipline exists against
13 his license for unprofessional conduct pursuant to section 2234
14 of the Business and Professions Code. Respondent agrees to be
15 bound by the Division's imposition of discipline as set forth in
16 the Order below.

17 8. The admissions made by respondent herein are only
18 for the purposes of this proceeding, or any other proceedings in
19 which the Division of Medical Quality, Medical Board of
20 California or other professional licensing agency is involved,
21 and shall not be admissible in any other criminal or civil
22 proceedings.

23 CONTINGENCY

24 9. This stipulation shall be subject to the approval
25 of the Division. Respondent understands and agrees that Board
26 staff and counsel for complainant may communicate directly with
27 the Division regarding this stipulation and settlement, without

1 notice to or participation by respondent or his counsel. If the
2 Division fails to adopt this stipulation as its Order, the
3 stipulation shall be of no force or effect, it shall be
4 inadmissible in any legal action between the parties, and the
5 Division shall not be disqualified from further action in this
6 matter by virtue of its consideration of this stipulation.

7 10. In consideration of the foregoing admissions and
8 stipulations, the parties agree that the Division shall, without
9 further notice or formal proceeding, issue and enter the
10 following Disciplinary Order:

11 DISCIPLINARY ORDER

12
13 IT IS HEREBY ORDERED that Certificate No. G59634 issued
14 to Warren Raymond McKay is revoked. However, the revocation is
15 stayed and respondent is placed on probation for 3 (three) years
16 on the following terms and conditions.

17 Within 15 days after the effective date of this
18 decision the respondent shall provide the Division, or its
19 designee, proof of service that respondent has served a true copy
20 of this decision on the Chief of Staff or the Chief Executive
21 Officer at every hospital where privileges or membership are
22 extended to respondent or where respondent is employed to
23 practice medicine and on the Chief Executive Officer at every
24 insurance carrier where malpractice insurance coverage is
25 extended to respondent.

26 1. PSYCHOTHERAPY Respondent shall continue in
27 psychotherapy with his present therapist, Dr. Donald Turner,

1 M.D., on a weekly basis for the first two years of probation.
2 Respondent shall have Dr. Turner, or any other subsequent
3 treating psychotherapist, submit quarterly status reports to the
4 Division or its designee. The respondent shall pay the cost of
5 the therapy and evaluations.

6 If respondent should choose to see a psychotherapist
7 other than Dr. Turner during his period of probation, respondent
8 shall submit to the Division or its designee for its prior
9 approval the name and qualifications of a psychotherapist of
10 respondent's choice.

11 If at any time the treating psychiatrist's report[s]
12 or evaluation determines that respondent is not mentally fit to
13 practice medicine safely, then respondent shall be suspended from
14 the practice of medicine until a repeat evaluation establishes
15 that he can practice safely, as evidenced by written notice to
16 respondent from the Division or its designee.

17 2. COMMUNITY SERVICE - FREE SERVICES Within sixty (60)
18 days of the effective date of this decision, respondent shall
19 submit to the Division or its designee for its prior approval a
20 community service program in which respondent shall provide free
21 medical services on a regular basis to a community or charitable
22 facility or agency for 50 hours per year for the first (2) two
23 years of probation.

24 3. EDUCATION COURSE Within ninety (90) days of the
25 effective date of this decision, and on an annual basis
26 thereafter, respondent shall submit to the Division or its
27 designee for its prior approval an educational program or course

1 to be designated by the Division, which shall not be less than 20
2 hours per year, for the first two years of probation. Some of
3 the course work must be in the areas of patient management and
4 the maintenance of physician/patient boundaries. This program
5 shall be in addition to the Continuing Medical Education
6 requirements for re-licensure. Following the completion of each
7 course, the Division or its designee may administer an
8 examination to test respondent's knowledge of the course.
9 Respondent shall provide proof of attendance for 45 hours of
10 continuing medical education of which 20 hours were in
11 satisfaction of this condition and were approved in advance by
12 the Division or its designee.

13 4. ETHICS COURSE Within sixty (60) days of the
14 effective date of this decision, respondent shall enroll in a
15 course in Ethics approved in advance by the Division or its
16 designee, and shall successfully complete the course during the
17 first year of probation.

18 5. OBEY ALL LAWS Respondent shall obey all federal,
19 state and local laws, all rules governing the practice of
20 medicine in California, and remain in full compliance with any
21 court ordered criminal probation, payments and other orders.

22 6. QUARTERLY REPORTS Respondent shall submit
23 quarterly declarations under penalty of perjury on forms provided
24 by the Division, stating whether there has been compliance with
25 all the conditions of probation.

26 7. PROBATION SURVEILLANCE PROGRAM COMPLIANCE Respondent
27 shall comply with the Division's probation surveillance program.

Respondent shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.

Respondent shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

8. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS DESIGNATED PHYSICIAN(S) Respondent shall appear in person for

interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

9. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-PRACTICE In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Division or its designee in writing within ten (10) days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of

1 medicine. Periods of temporary or permanent residence or
2 practice outside California or of non-practice within California,
3 as defined in this condition, will not apply to the reduction of
4 the probationary period.

5 10. COMPLETION OF PROBATION Upon successful completion
6 of probation, respondent's certificate shall be fully restored.

7 11. VIOLATION OF PROBATION If respondent violates
8 probation in any respect, the Division, after giving respondent
9 notice and the opportunity to be heard, may revoke probation and
10 carry out the disciplinary order that was stayed. If an
11 accusation or petition to revoke probation is filed against
12 respondent during probation, the Division shall have continuing
13 jurisdiction until the matter is final, and the period of
14 probation shall be extended until the matter is final.

15 12. COST RECOVERY The respondent is hereby ordered to
16 reimburse the Division the amount of \$4,000.00 within ninety
17 (90) days of the effective date of this decision for its
18 investigative and prosecution costs. Failure to reimburse the
19 Division's cost of investigation and prosecution shall constitute
20 a violation of the probation order, unless the Division agrees in
21 writing to payment by an installment plan because of financial
22 hardship. The filing of bankruptcy by the respondent shall not
23 relieve the respondent of his responsibility to reimburse the
24 Division for its investigative and prosecution costs.

25 13. PROBATION COSTS Respondent shall pay \$2,160.00 per
26 year for each year of probation for the costs associated with
27 probation monitoring. Such costs shall be payable on an annual

1 basis to the Division of Medical Quality and delivered to the
2 designated probation surveillance monitor at the beginning of
3 each calendar year. Failure to pay costs within 30 days of the
4 due date shall constitute a violation of probation.

5 14. MEDI-CAL REIMBURSEMENT Compelling circumstances
6 exists that warrant continued Medi-Cal reimbursement during the
7 probationary period.

8 15. LICENSE SURRENDER Following the effective date of
9 this decision, if respondent ceases practicing due to retirement,
10 health reasons or is otherwise unable to satisfy the terms and
11 conditions of probation, respondent may voluntarily tender his
12 certificate to the Board. The Division reserves the right to
13 evaluate the respondent's request and to exercise its discretion
14 whether to grant the request, or to take any other action deemed
15 appropriate and reasonable under the circumstances. Upon formal
16 acceptance of the tendered license, respondent will not longer be
17 subject to the terms and conditions of probation.

18 ACCEPTANCE

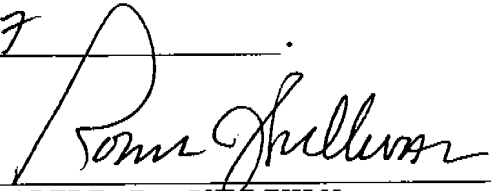
19 I have carefully read the above Stipulated Settlement
20 and Decision. I understand the effect this stipulation will have
21 on my license and agree to be bound thereby. I enter into this
22 Stipulated Settlement and Decision knowingly, voluntarily, freely
23 and intelligently.

24 DATED: 1/24/97.

25
26 W. R. McKay
27 WARREN R. MCKAY
Respondent

1 I have fully discussed with respondent the terms and
2 conditions and other matters contained in the above Stipulated
3 Settlement and Decision and approve its form and content.

4 DATED: 1-24-97.

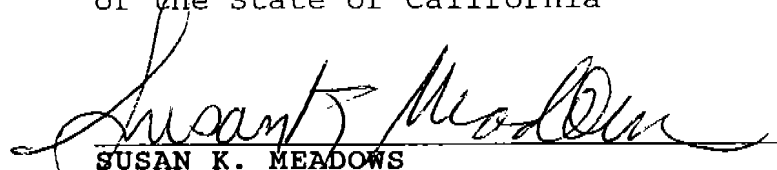
5 
6 _____
7 ROBERT J. SULLIVAN
8 Attorney for Respondent

9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Decision is
11 hereby respectfully submitted for consideration of the Division
12 of Medical Quality, Medical Board of California, Department of
13 Consumer Affairs.

14 DATED: 1-24-97.

15 DANIEL E. LUNGREN, Attorney General
16 of the State of California

17 
18 _____
19 SUSAN K. MEADOWS
20 Deputy Attorney General

21 Attorneys for Complainant
22
23
24
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26
27

EXHIBIT A

ORIGINAL

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 SUSAN K. MEADOWS
Deputy Attorney General
3 455 Golden Gate Avenue, Suite 6200
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4 Telephone: (415) 703-2509

5 Attorneys for Complainant

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7 BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
8 STATE OF CALIFORNIA

9	In the Matter of the Accusation)	No. 13-92-21952
	Against:)	
10)	
	WARREN R. MCKAY, M.D.)	ACCUSATION
11	3045 Jackson Street, No. 101)	
	San Francisco, CA 94115)	
12	Physician's and Surgeon's)	
	Certificate No. G59634)	
13)	
	Respondent.)	
14)	
15)	

16 Complainant, Dixon Arnett, as causes for disciplinary
17 action against the above named respondent, Warren R. McKay, M.D.,
18 (hereinafter referred to as "respondent") charges and alleges as
19 follows:

20 1. He is the Executive Director of the Medical Board
21 of California (hereinafter the "Board") and makes and files these
22 charges and allegations solely in his official capacity and not
23 otherwise.

24 2. On or about February 23 1987, the Board issued to
25 respondent physician's and surgeon's certificate number G59634.
26 No prior disciplinary action has been taken against respondent's
27 certificate. Respondent is not a supervisor of a physician

1 assistant.

2 STATUTES

3 4. Section 2018 of the Business and Professions
4 Code^{1/} authorizes the Division of Medical Quality to adopt
5 regulations as may be necessary to enable it to carry into effect
6 the provisions of law relating to the practice of medicine.

7 5. Section 2220 provides that the Division of Medical
8 Quality of the Board may take action against all persons guilty
9 of violating the provisions of the Medical Practice Act (sections
10 2000 et seq.)

11 6. Section 2234 provides, in pertinent part, that the
12 Division of Medical Quality shall take action against any
13 licensee who is charged with unprofessional conduct. In addition
14 to other provisions of this article, unprofessional conduct
15 includes, but is not limited to, the following: ...

16 (b) Gross negligence.

17 (c) repeated negligent acts.

18 7. At all times pertinent to the charges in this
19 Accusation, section 726 of the code provided, in pertinent part,
20 that the commission of any act of sexual abuse, misconduct, or
21 relations with a patient which is substantially related to the
22 qualifications, functions or duties of the occupation for which a
23 license was issued constitutes unprofessional conduct and grounds
24 for disciplinary action.

25 //

26

27 1. All statutory references are to the Business and
Professions Code unless otherwise indicated.

1 FIRST CAUSE FOR DISCIPLINARY ACTION

2 (PATIENT D.S.)

3 8. On or about December of 1988, D.S.^{2/}, after two
4 back surgeries, was referred to the UCSF Pain Management Center
5 (hereinafter referred to as "Center") by her treating physician.
6 D.S. was in severe pain at the time that she was admitted to the
7 Center. The Center is an out-patient pain clinic where a
8 multiple disciplinary team approach is utilized with an emphasis
9 on anesthesiological pain blocking techniques.

10 9. Respondent interviewed D.S. on her initial visit to
11 the Center and took over her care. During the first six months
12 of D.S.'s treatment, respondent commented on her hair color and
13 the underwear that she was wearing.

14 10. During the summer of 1989 after D.S. had returned
15 from vacation, respondent complimented her on her tan lines.
16 During D.S. treatment, respondent progressively began to talk
17 about himself and told D.S. about his personal life and his
18 personal problems. Respondent spoke disparagingly about his co-
19 workers to D.S.

20 11. In or about October of 1989, during an office
21 visit to the Center, D.S. underwent several painful procedures
22 which lasted three to four hours. After the procedures, D.S. was
23 laying on a table to recover from the anesthetic when respondent
24 approached her. Respondent stood with his stomach directly in
25 her face and told her to poke him to see how fit he was.

26
27 2. The name of the patients referred to herein will be
provided to respondent pursuant to any Request for Discovery.

1 12. D.S. began making two day, tri-weekly visits to
2 the clinic in the summer of 1989. After an appointment with
3 respondent, in May of 1990, D.S. invited respondent to join her
4 and a female friend for dinner. Respondent gave D.S. his home
5 telephone number and residence address. D.S. and her friend
6 picked respondent up at his home that evening and he gave them a
7 tour of his home. After dinner, D.S. drove respondent home and
8 they had sexual intercourse.

9 13. Respondent continued to treat patient D.S. from
10 1988 until September of 1992. From May of 1990 until April of
11 1992 respondent continued to have sexual relations with D.S., his
12 patient. During this time, respondent continued to prescribe
13 methadone and other narcotics to D.S. Respondent admonished D.S.
14 not to tell anyone about their personal or social relationship.
15 D.S. felt emotionally and physically stressed by this sexual
16 relationship since she was already in severe physical pain and
17 was married.

18 14. Respondent's conduct as set forth in paragraphs 8
19 through 13 constitutes unprofessional conduct under section 726.
20 Therefore cause for disciplinary action exists.

21 SECOND CAUSE FOR DISCIPLINARY ACTION

22 (Patient D.S.)

23 15. Respondent's conduct as set forth in paragraphs 8
24 through 13 constitutes unprofessional conduct under section 2234;
25 gross negligence (section 2234(b)); and/or repeated negligent
26 acts (section 2234(e)). Therefore cause for disciplinary action
27 exists.

1 THIRD CAUSE FOR DISCIPLINARY ACTION

2 (Patient L.S.)

3 16. From 1988 until May of 1990, L.S. was a patient at
4 the Center where she received treatment for chronic neck pain.
5 Respondent was L.S.'s physician and he treated L.S. with numerous
6 pain management methods including trigger point injections and
7 nerve blocks.

8 17. In 1989, respondent and L.S. began to have a
9 sexual relationship. The relationship began when respondent gave
10 L.S. his card and asked her to call him. Respondent spent time
11 with L.S. and her parents in Tahoe for a weekend. During that
12 visit, respondent persuaded L.S.'s father to arrange for a loan
13 through a trust fund because he was having problems securing a
14 loan for a down payment on his condominium.

15 18. During March of 1990, respondent told L.S. their
16 relationship was over. During 1990, respondent contacted L.S.
17 and told her that she may be contacted because of a complaint
18 that was filed by a patient with whom he had been romantically
19 involved. Respondent told L.S. to tell whomever contacted her
20 that they were just friends.

21 19. Respondent's conduct as set forth in paragraphs 16
22 and 18 constitutes unprofessional conduct under section 726.
23 Therefore cause for disciplinary action exists.

24 FOURTH CAUSE FOR DISCIPLINARY ACTION

25 (Patient L.S.)

26 20. Respondent's conduct as set forth in paragraphs 16
27 through 18 constitutes unprofessional conduct under section 2234;

1 gross negligence (section 2234(b)); and/or repeated negligent
2 acts (section 2234(e)). Therefore cause for disciplinary action
3 exists.

4 FIFTH CAUSE FOR DISCIPLINARY ACTION

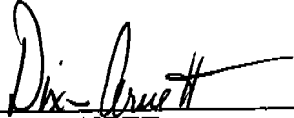
5 21. Respondent's conduct as set forth in paragraphs 8
6 through 18 whether jointly or in any combination thereof,
7 constitutes repeated negligent acts and/or, whether singularly,
8 jointly or in any combination thereof, constitutes gross
9 negligence. Therefore cause for disciplinary action exists.

10 COST RECOVERY

11 22. Under section 125.3, complainant requests that
12 complainant be awarded reasonable costs of investigation and
13 prosecution of this action.

14 WHEREFORE, complainant requests that the Board hold a
15 hearing on the matters hereinabove ~~alleged and after~~ that hearing
16 issue an order suspending or revoking physician's and surgeon's
17 certificate No. G59634 or any certificate to supervise physician
18 assistants heretofore issued to respondent Warren R. McKay and
19 taking such other and further action as is deemed just and
20 proper.

21 DATED: April 17, 1995

22 
23 DIXON ARNETT
24 Executive Director
25 Medical Board of California
26 State of California

27 Complainant

mckay.acc